

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

FEB - 8 1985

In the Matter of)
Policies and Rules Concerning)
Unauthorized Changes of Consumers')
Long Distance Carriers)
)

CC Docket No. 94-129

DOCKET FILE COPY ORIGINAL

REPLY COMMENTS OF HI-RIM COMMUNICATIONS, INC.

Hi-Rim Communications ("Hi-Rim"), a reseller of long distance telephone services, by its undersigned attorneys, hereby submits its reply comments in the above-captioned proceeding. Hi-Rim urges the Federal Communications Commission ("FCC" or "Commission") to consider the interests of small and mid-sized interexchange carriers ("IXCs") as well as the future of interexchange telephone competition when fashioning its rules governing the form, content and use of Letters of Agency ("LOAs").

I. INTRODUCTION

In its opening Comments, Hi-Rim advocated that the Commission establish a standard of clarity for LOAs such as that contained in Section (d) of the proposed rules, without either mandating or prohibiting particular methods of marketing to customers. Additionally, Hi-Rim opposed aspects of the Commission's proposed regulations that would eliminate some of the most effective and reasonable marketing techniques. Furthermore, Hi-Rim suggested that federal preemption of state regulations regarding LOAs would reduce compliance costs and therefore benefit consumers with both lower prices and less confusing requirements. After

No. of Copies rec'd 215
List A B C D E

reviewing the initial comments, Hi-Rim notes that a substantial number of commenters share its concerns.

II. DISCUSSION

A. COMMENTS SUPPORT PROMOTING LOA CLARITY WHILE PRESERVING IXC MARKETING FLEXIBILITY

A review of the initial comments indicates general support for Sections (d) and (e) of the Commission's proposed rules. CompTel Comments at 2; Allnet Comments at 3; AT&T Comments at 12; Sprint Comments at 1. These sections eliminate deceptive marketing practices and consumer confusion by prohibiting "negative-option" LOAs and by requiring that LOAs be clear, legible, and unambiguous. As noted in its initial comments, Hi-Rim supports the Commission's proposals in these areas.

A substantial number of parties, inter alia, AT&T, MCI, Sprint, the Telecommunications Resellers Association ("TRA"), Operator Services Company ("OSC"), America's Carriers Telecommunications Association ("ACTA"), Touch 1, and the Competitive Telecommunications Association ("CompTel"), however, share Hi-Rim's concern that other aspects of the Commission's proposed regulations will be burdensome, restrictive, and unnecessary in light of the Section (d) requirement. Additionally, a number of small IXCs, IXC resellers, and representative associations join Hi-Rim in expressing deep concern that the regulations will unfairly burden smaller carriers to a greater extent and thus harm competition in the interexchange marketplace. See TRA Comments at 5; ACTA Comments at 3-4; Home Owners Long Distance Comments at 2-3; One Call Comments at 3; Touch 1 Comments at 1; Mid-Com Comments at 1. Accordingly, Hi-Rim concurs with TRA's conclusion that "any

limitation on marketing obviously inures to the benefit of large, established providers with substantial market share." TRA Comments at 12. MCI, for example, supports TRA's assertion in suggesting that the proposed regulations will hamper its ability to use creative marketing to compete with AT&T. MCI Comments at 3-4. Hi-Rim suggests, therefore, that the Commission take into account commenting parties' concerns regarding the disproportionate impact that would result from the application of the proposed unnecessary regulatory requirements, as discussed more fully below. TRA Comments at 1; Mid-Com Comments at 2.

In taking issue with the Commission's proposed regulations regarding LOA's, commenters expressed concern over provisions requiring that LOAs: contain a specific typeface, fonts or language; be printed on paper separate from any inducements or be mailed separate from inducements.

Commenters correctly objected to regulations governing a LOA's typeface, point-size and language because such regulations are unnecessary and overburdensome in light of Section 64.1150(d)'s requirement that LOAs be "clear and unambiguous." TRA Comments at 7; Touch 1 Comments at 5. Hi-Rim acknowledges TRA's observation that IXC's would be required to discard "otherwise reasonable LOAs" at substantial cost. TRA Comments at 7. As TRA also notes, such regulations will impose proportionally greater costs on smaller IXC's. Id. Additionally, this provision is overbroad because it restricts carriers from utilizing otherwise clear and understandable marketing material that would not run afoul of the underlying purpose of the regulation. See Touch 1 Comments at 1; MCI Comments at 3-4.

Similarly, Hi-Rim concurs with the substantial number of commenters that object to the Commission's proposal to separate the LOA from any inducements or to require that the LOA be mailed separately. See ACTA Comments at 2; One Call Comments at 3; TRA Comments at 12. Hi-Rim notes that some inducement LOAs, such as checks to cover the costs of a PIC change, would likely be prohibited. Such checks are an essential ingredient in the mix of a competitive interexchange marketplace. See AT&T Comments at 13; Touch 1 Comments at 6. As MCI correctly notes, "[t]hese proposals go far beyond the elimination of sharp practices, because they would unfairly impact the legitimate marketing practices of many carriers." MCI Comments at 3-4. See Touch 1 Comments at 7; TRA Comments at 12; One Call Comments at 2. For example, TELECAM calculates that this requirement alone will require it to increase rates four percent. Again, these rate increases will only serve increase consumer prices and reduce the ability of smaller IXC's to compete with larger carriers. ACTA Comments at 2.

Hi-Rim strongly recommends that the Commission heed the concerns of a substantial number of commenters that suggest the proposed regulations are too inflexible. See e.g. ACTA Comments at 6; CompTel Comments at 1-2; TRA Comments at 4; Touch 1 Comments at 4. Accordingly, Hi-Rim echoes CompTel's recommendation that the Commission should be careful to preserve legitimate forms of competition while addressing the issue of confusing or misleading LOAs. CompTel Comments at 2. At present, Hi-Rim believes that the proposed regulations are overreaching and detrimental to the competitive future of the market. Hi-Rim suggests, therefore, that the Commission's general prohibitions contained in Sections (d) and (e) are sufficient.

B. COMMENTS SUPPORT PREEMPTION OF INCONSISTENT AND BURDENSOME STATE REGULATION REGARDING PIC CHANGES

Hi-Rim supports commenters' recommendation that the Commission clarify its rules and preempt any inconsistent state PIC change rules. Sprint Comments at 4; LDDS Comments at 2-3; ACTA Comments at 11-13; CompTel Comments at 10-13. ACTA and others note, for example, that Florida and South Carolina are currently considering adopting their own rules governing interexchange carriers. ACTA Comments at 11-12. The development of a dual regulatory scheme threatens to impose substantial compliance burdens upon both large and small IXC's. Sprint, for example, notes that large carriers may be required to have separate LOAs for each state. Sprint Comments at 4. Smaller IXC's, however, will be unable to sustain the costs of nationwide compliance and will be forced to curtail their operations. Likewise, customers in certain regions may not be able to obtain service from a particular carrier because that carrier has chosen not to serve a particular state. Accordingly, consistent with the Commission's obligation under Section 151 of the Communication's Act to promote the growth of a "rapid efficient Nationwide and world-wide wire . . . communication service. . .," the Commission should preempt inconsistent state regulations regarding LOAs or PIC changes. 47 U.S.C. §151 (1994). As both Hi-Rim and other commenters stated in their initial comments, the FCC has clear legal authority to preempt inconsistent state regulation in this instance. Hi-Rim Comments at 5-7; CompTel Comments at 10-13. Furthermore, Commission action in preempting inconsistent state regulation in this case is fully consistent with prior Commission orders.^{1/}

^{1/} See e.g., In Re Petition for an Expedited Declaratory Ruling Filed by National Association (continued...)

C. COMMENTS DO NOT SUPPORT REGULATION OF 800 NUMBERS

In response to the request for comments on whether it should adopt regulations regarding the use of "800" numbers as related to PIC change orders, numerous commenters conclude that there is no current need to regulate this area. AT&T Comments at 22; One Call Comments at 12; Sprint Comments at 14; Touch 1 Comments at 8. Hi-Rim agrees that there is no evidence of abuse and thus joins commenters in urging the Commission to continue permitting consumers to change IXCs by calling an 800 number. Hi-Rim notes, as do other commenters, that 800 numbers play an important role in the current competitive state of the IXC marketplace. To prohibit IXCs from utilizing numbers or to impose regulatory requirements at this juncture is not only unnecessary but will burden smaller carriers and prevent them from competing with dominant providers.

III. CONCLUSION


Hi-Rim supports the Commission's efforts to eliminate deceptive marketing, and to prohibit unclear or misleading LOAs. The imposition of unnecessary regulations or the elimination of flexible compliance, however, will impede smaller carriers from competing

^{1/}(...continued)

for Information Services, Audio Communications, Inc. and Ryder Communications, Memorandum Opinion and Order on Reconsideration, FCC 94-358 (Released January 24, 1995). In this order, the Commission held that a South Carolina policy governing the blocking of intrastate 900 numbers served to impede and thwart federal policy. Furthermore, because the Commission found that South Carolina's regulation of intrastate calls was not jurisdictionally severable, it concluded that it had authority under Section 2(b) of the Act to preempt the state's conflicting regulations. Id. at 4.

for customers, thus resulting in less competition and higher consumer prices. Hi-Rim is confident that the Commission can address the concerns addressed herein, while permitting carriers the necessary flexibility to continue vigorous competition.

Respectfully Submitted,



Andrew D. Lipman
William B. Wilhelm, Jr.

SWIDLER & BERLIN, Chartered
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007
(202) 424-7500

Attorneys for Hi-Rim,
Communications, Inc.

February 8, 1995

CERTIFICATE OF SERVICE

I, Brenna M. Newman, hereby certify that a copy of the foregoing Reply Comments has been sent by United States First Class Mail, postage prepaid, unless otherwise noted, to all parties listed in the foregoing Reply Comments on this 8th day of February, 1995.


BRENNAM. NEWMAN

**ALLNET COMMUNICATIONS SERVICE
ROY L. MORRIS
REGULATORY COUNSEL
1990 M STREET, NW - SUITE 500,
WASHINGTON, D.C. 20036**

**HERTZ TECHNOLOGIES, INC.
REBECCA L. REED
TARIFF ANALYST
5601 NORTHWEST EXPRESSWAY
OKLAHOMA CITY, OK 73132**

**FORMAL COMPLAINTS BRANCH
FEDERAL COMMUNICATIONS COMM.
ENFORCEMENT DIVISION
COMMON CARRIER BUREAU
PLAZA LEVEL
1250 23RD STREET, N.W.
WASHINGTON, D.C. 20554**

**INTERNATIONAL TRANSCRIPTS SERVICES
ROOM 140
2100 M STREET, N.W.
WASHINGTON, D.C. 20037**

**CHARLES C. HUNTER
HUNTER & MOW, P.C.
1620 I STREET, N.W.
SUITE 701
WASHINGTON, D.C. 20006**

**GENEVIEVE MORELLI
VICE PRESIDENT AND
GENERAL COUNSEL
THE COMPETITIVE TELECOMMUNICATIONS
ASSOCIATION
1140 CONNECTICUT AVE., N.W.
SUITE 220
WASHINGTON, D.C. 20036**

**DANNY E. ADAMS
STEVEN A. AUGUSTINO
WILEY, REIN & FIELDING
1776 K STREET, N.W.
WASHINGTON, D.C. 20006**

**KATHLEEN M.H. WALLMAN
CHIEF, COMMON CARRIER BUREAU
FEDERAL COMMUNICATIONS COMMISSION
2033 M STREET, N.W., ROOM 918
WASHINGTON, D.C. 20554**

**A. RICHARD METZGER
DEPUTY BUREAU CHIEF
COMMON CARRIER BUREAU
FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET, N.W., ROOM 500
WASHINGTON, D.C. 20554**

**KATHLEEN LEVITZ
DEPUTY BUREAU CHIEF
COMMON CARRIER BUREAU
FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET, N.W. ROOM 500
WASHINGTON, D.C. 20554**

**CHARLES H. HELEIN
HELEIN & WAYS DORF, P.C.
GENERAL COUNSEL
AMERICA'S CARRIERS TELECOM.
1850 M STREET, N.W.
WASHINGTON, D.C. 20036**

**CHARLES H. HELEIN
JULIA A. WAYS DORF
HOMEOWNERS LONG DISTANCE, INC.
1850 M STREET, N.W.
WASHINGTON, D.C. 20036**

**MICHAEL J. SHORTLEY, III
ATTORNEY FOR FRONTIER
COMMUNICATIONS
FRONTIER COMMUNICATIONS INTERN.
180 SOUTH CLINTON AVENUE
ROCHESTER, NEW YORK 14646**

**CATHERINE R. SLOAN, ESQ.
VICE PRESIDENT, FEDERAL AFFAIRS
LDDS COMMUNICATIONS, INC.
1825 EYE STREET, NW
SUITE 400
WASHINGTON, D.C. 20006**

**KATHY L. SHOBERT
FORMAL COMPLAINTS BRANCH
ENFORCEMENT DIVISION
COMMON CARRIER BUREAU
PLAZA LEVEL
1250 23RD STREET, N.W.
WASHINGTON, D.C. 20554**

**ITS
2100 M STREET, N.W.
SUITE 140
WASHINGTON, D.C. 20037**

**LEON M. KESTENBAUM
H. RICHARD JUHNKE
1850 M STREET, N.W.
11TH FLOOR
WASHINGTON, D.C. 20036**

**FORMAL COMPLAINTS BRANCH
ENFORCEMENT DIVISION
COMMON CARRIER BUREAU
FEDERAL COMMUNICATIONS COMM.
1250 23RD STREET, N.W.
PLAZA LEVEL
WASHINGTON**

**LEON M. KESTENBAUM
H. RICHARD JUHNKE
1850 M STREET, N.W.
11TH FLOOR
WASHINGTON, D.C. 20036**

**WILBERT E. NIXON, JR.
FEDERAL COMMUNICATIONS COMM.
1250 23RD STREET, N.W.
ROOM 100
WASHINGTON, D.C. 20554**

PETER ARTH, JR.
EDWARD W. O'NEILL
ELLEN S. LEVINE
STATE OF CALIFORNIA AND THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102

ROBERT W. GEE
KARL R. RABAGO
SARAH GOODFRIEND
PUBLIC UTILITY COMMISSION OF TEXAS
7800 SHOAL CREEK BLVD.
AUSTIN, TX 78757

JOHN H. CARLEY
DEPUTY ATTORNEY GENERAL
PUBLIC ADVOCACY
STATE OF NEW YORK
DEPARTMENT OF LAW
120 BROADWAY
NEW YORK, NY 10271

KIRK SMITH
PRESIDENT
OPERATOR SERVICE COMPANY
1624 TENTH STREET
LUBBOCK, TX 79401

ROBERT M. LYNCH
DURWARD D. DUPRE
J. PAUL WALTERS, JR.
SOUTHWESTERN BELL TELEPHONE
COMPANY
ONE BELL CENTER, SUITE 3520
ST. LOUIS, MISSOURI 63101

WILLIAM J. COWAN
GENERAL COUNSEL
NEW YORK STATE DEPARTMENT
OF PUBLIC SERVICE
THREE EMPIRE STATE PLAZA
ALBANY, NEW YORK 12223-1350

WILLIAM TERRY MILLER
SECRETARY
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

DAVID J. GILLES
ASSISTANT ATTORNEY GENERAL
OFFICE OF CONSUMER PROTECTION
123 WEST WASHINGTON AVENUE
P.O. BOX 7856
MADISON, WI 53707-7858

KATHY SHOBERT
DIRECTOR, FEDERAL AFFAIRS
901 15TH STREET, N.W.
SUITE 900
WASHINGTON, D.C. 20005

RANDALL B. LOWE
PIPER & MARBURY
1200 19TH STREET, N.W.
WASHINGTON, D.C. 20036

**EDWARD R. WHOLL
WILLIAM J. BALCERSKI
NYNEX TELEPHONE COMPANIES
120 BLOOMINGDALE ROAD
WHITE PLAINS, NY 10605**

**CYNTHIA B. MILLER
ASSOCIATE GENERAL COUNSEL
FLORIDA PUBLIC SERVICE COMMISSION
101 EAST GAINES STREET
TALLAHASSEE, FLORIDA 32399**

**WILLIAM TERRY MILLER
PRESIDENT
TELCAM
901 ROSENBERG
GALVESTON, TEXAS 77550**

**JAMES P. TUTHILL
BETSY STOVER GRANGER
PACIFIC BELL
NEVADA BELL
140 NEW MONTGOMERY STREET, RM. 1525
SAN FRANCISCO, CA 94105**

**WILLIAM MALONE
9117 VENDOME DRIVE
BETHESDA, MARYLAND 20817-4022**

**GTE SERVICE CORPORATION
DAVID J. GUDIRNO
1850 M STREET, N.W.
SUITE 1200
WASHINGTON, D.C. 20036**

**GREGORY F. INTOCCIA
DONALD J. ELARDO
1801 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006**

**MARK C. ROSENBLUM
ROBERT J. MCKEE
PETER H. JACOBY
SETH S. GROSS
295 NORTH MAPLE AVENUE
BASKING RIDGE, NJ 07920**

**RANDALL B. LOWE
ONE CALL COMMUNICATIONS, INC.
PIPER & MARBURY
1200 19TH STREET, N.W.
WASHINGTON, D.C. 20036**